No. 02-306

Supreme Court, U.S.
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In The

Supreme Court of the United States

BENEFICIAL NATIONAL BANK AND
BENEFICIAL TAX MASTERS, INC.,

Petitioners,

v.

MARIE ANDERSON, *et al.*,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

BRIEF FOR THE CONSUMER ATTORNEYS OF CALIFORNIA, AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Consumer Attorneys of California (hereinafter "CAOC") is a voluntary membership organization of more than 3,000 consumer attorneys practicing throughout California.[1] The organization was founded in 1962 and its members predominantly represent individuals subjected in a variety of ways to consumer fraud practices, employment discrimination, personal injuries and insurance bad faith. Consumer Attorneys of California has taken a leading role in advancing and protecting the rights of consumers and injured victims in both the courts and the Legislature.

The issue of whether claims involving usury against a national bank necessarily arise under section 30 of the National Bank Act, 12 U.S.C. §§ 85-86 ("NBA"), and completely preempt and displace all state statutory and common laws on this subject is of critical importance not only to the Consumer Attorneys of California and their clients but to the public in general. As part of its efforts to preserve and protect the rights of California consumers, the members of CAOC prosecute plaintiff and plaintiff class actions to challenge practices and policies of financial institutions which cause economic harm and loss to consumers including the national banks.

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[1] This brief was authored solely by the amicus and counsel listed on the cover; no part was authored by counsel for a party. No one other than the amicus or its counsel made any monetary contributions to the preparation or submission of this brief. All parties have consented to the filing of this amicus curiae brief. The consent letters are being filed with the Court along with this brief.

The CAOC is concerned that if this Court were to conclude that section 30 of the NBA completely preempts and displaces state law, and that Congress intended that banks facing usury claims in state court should have the ability to remove the case to a federal forum, this will severely impact the well-established right of plaintiffs to choose a state court as the forum in which to litigate state statutory and common law claims against banks. Moreover, if this Court were to so broadly construe sections 85 and 86 as to preempt and displace state-law claims which only remotely relate to the rate of "interest" charged by a national bank, the rights of the states to enact and enforce state laws to protect their citizens in matters concerning national banks will be severely impaired.

The concerns of the CAOC regarding the adverse impact of a decision by this Court that the NBA completely preempts all state usury laws is particularly warranted here because this case comes to this Court in the procedural context of removal and remand issues.[2] No evidence

[2] Petitioners argue that all of respondent's claims (all of which were based on state law) are nothing more than claims alleging usurious interests against a national bank, which *necessarily* arise under federal law *and* also give Petitioners the right to remove to federal court. Petitioners agree that "under the 'well-pleaded complaint' rule, a state-law claim may not be removed merely because the state-law claim is likely to be met by a federal defense (including a defense of federal preemption)". Brief for Petitioners, p. 9. However, Petitioners go on to assert that in this case, "that is not the situation here, where the usury claim itself *can only* arise under federal law, regardless of the label placed on that claim by the plaintiffs." (*Id.*) [emphasis added]. Petitioners and amicus United States assume that Congress intended to give banks sued for usury not just the ability to assert preemption as a defense, but *also* the ability to remove the case to a federal forum. The assertion by Petitioners that federal law provides the *exclusive* basis for

(Continued on following page)

was ever presented to the district court that the subject state laws are preempted and should not be enforced against Petitioners because this will interfere with or significantly impede the ability of national banks in general, to lawfully carry out the business of banking.

The CAOC thus submits this brief to explain why, under our Constitution, laws, and federal system of government, this Court should affirm the judgment of the Eleventh Circuit Court of Appeals and reject Petitioners' efforts to eviscerate a plaintiff's traditional right to select the law under which she will pursue her legal remedies as well as the forum in which she will litigate her state law based claims.

SUMMARY OF ARGUMENT

There is a long-standing presumption against preemption, which is rooted in the concept of federalism. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992). Petitioners seek to cast aside this presumption in favor of removal. There is no reason to conclude, as Petitioners do, that in enacting section 30 of the National Bank Act, 12 U.S.C. §§ 85 and 86, Congress intended to completely

plaintiffs' state law claims is especially troubling since it is tantamount to an assertion that plaintiffs' remedies will be limited to those provided by federal law. Such a result gives short-shrift to principles of federalism and a state's historic ability to fashion state law to remedy harm caused by a bank against its citizenry. *See generally, Sprietsma v. Mercury Marine*, ___ U.S. ___, 123 S.Ct. 518, 527 (2002) (Even when federal law expressly preempts state law, it would be rational for Congress not to preempt common law claims which necessarily perform an important remedial role in compensating victims.)

preempt and displace all state statutory and common law involving usury (such as, for example, Congress did in the area of employee health benefits when it enacted the Employee Retirement Income Securities Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*) If state law conflicts with sections 85 or 86, a national bank may assert preemption as a defense. If a national bank is sued in state court exclusively for state law based claims and these claims involve usury, there is nothing in the NBA to suggest that Congress intended to allow a defendant to recast these state law claims as ones necessarily arising from and based *exclusively* on federal law and that the defendant also has the right to remove these claims to federal court.

If complete preemption were to apply in cases such as the instant one, the historical powers of states to legislate and enforce consumer protection laws governing financial institutions, including national banks, and a citizen's right to choose what state-based consumer protection rights to litigate and in what forum, will be jeopardized.

ARGUMENT

I. THERE IS NO HISTORICAL OR LEGAL JUSTIFICATION FOR IGNORING THE WELL-PLEADED COMPLAINT RULE HERE AND DISREGARDING THE INTERESTS OF THE STATES IN REGULATING BANKS

As the court of appeals points out, the Plaintiffs (Respondents herein) alleged only state-law claims in their

complaint.[3] Nevertheless, Petitioners characterize all five causes of action as nothing more than claims arising under federal law and thus removable to federal court. Petitioners argue that "Congress has so forcefully exercised its constitutional power to supplant state law," that under the complete preemption corollary to the well-pleaded complaint rule, plaintiff's state-law based claims are "transformed into a federal claim and may be removed to federal court." Petitioners' Brief, p. 10. However, as the court of appeals correctly concluded, Congress did not intend sections 85 and 86, to preempt completely such state law based claims and thus provide a defendant with the ability to remove such cases to federal court.

It is axiomatic that in our federalist system, a plaintiff is free to choose whether to assert a state or federal claim. The plaintiff is "the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 393 (1987); *see also The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22, 25 (1913) ("Of course, the party who brings a suit is master to decide what law he will rely upon") (Holmes, J.). The states are free, through enactment of state laws or by state common law, to make certain conduct unlawful for the protection of consumers.

As this Court has also observed, because the states are "independent sovereigns" in our federal system, "[c]onsideration of issues under the Supremacy Clause 'starts with the assumption that the historic police powers

[3] The causes of action alleged were for (1) fraud; (2) suppression; (3) breach of fiduciary duty; (4) charging an excessive interest rate under Alabama Code § 8-8-1 (1975); and (5) violation of the Alabama Mini-Code.